IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Crl.MC.No. 78 of 2005

CC.130/2002 of JUDL.MAGISTRATE OF FIRST CLASS-I, PERAMBRA

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PETITIONER/ACCUSED:

SAJITH, S/O. SANKARAN,
KUNNATHARA AMSOM, KANNUR,
ARAVATHUKKAL, KOYILANDY
TALUK, KOZHIKODE.

BY ADV. SRI.SANTHARAM.P

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.M.C.No. 78 of 2005

ORDER

Petitioner is the accused in C.C.No.130/02 on the file of the Judicial First class Magistrate's Court-I, Perambra. He was convicted for offences under Sections 279, 337 and 338 IPC and was sentenced under Sections 279 and 337 IPC to pay a fine of Rs.750/- and Rs.500/- respectively and further to undergo simple imprisonment till rising of court and to pay a fine of Rs.750/- for offence under Section 338 IPC. He did not undergo the sentence till rising of court nor did he pay the fine amount. Consequently, proceedings were initiated against the sureties under Section 446 of the Cr.P.C. The prayer in this Crl.M.C. is to direct the court below to receive the fine amount and exonerate the petitioner from confinement till rising of court, taking into consideration the confinement he has already undergone or else to impose additional fine amount for his non

appearance and thereby exonerate the sureties from their liabilities.

2. It is submitted by the learned counsel for the petitioner that the confinement already undergone by the petitioner is his presence in court on the date of delivering the judgment. It is further submitted that the petitioner could not undergo the sentence awarded by the court below, as he got job abroad and proceeded to accept the job before he could file an appeal against the conviction and sentence awarded vide Annexure-I judgment. The prayer to have the sentence of simple imprisonment till rising of court set off against the presence of the petitioner in court on the date of delivering the judgment cannot be allowed, as, even according to the petitioner, he was not prepared to accept the sentence awarded and he wanted to prefer an appeal. However, inasmuch as he has not preferred any appeal, he can surrender before the court below and receive the sentence.

His prayer to exonerate the sureties from their liabilities in proceedings under Section 446 of the Cr.P.C. is not tenable. It is for the sureties to appear before the court below and show cause why they should not be ordered to pay the bond amount as penalty.

This Crl.M.C., in the circumstances, is devoid of merit and is, hence, dismissed.

19th December, 2007 (K.P.Balachandran, Judge)

tkv